

NEW CORPORATION TAX LAW

By Claude T. Barnes.

So persistently does legislation strive to keep abreast with the subtleties of corporate management, so manifold are the restrictions which, from their very nature, affect only the Goliaths of commerce; and, above all, so predominate are the popular descriptions of the government's quarrels with the strongest corporations of history, that the David, the smaller law-abiding company, is liable not to find in all the vast field of corporate legislation the single item meant for its pursuit and obedience. In fact, with only a few days left in which to take the first step the new law requires, it is a matter of some surprise that more specific information has not been spread broadcast concerning the new corporation tax law. Every corporation in the United States which has earned over \$5,000 net the present year is affected, and great are the liabilities resulting from a disregard of the new measure.

The chief point of the act is its tax of 1 per cent on all over \$5,000 of the net income earned by corporations for gain during this and subsequent years, but so varied are the exceptions and so stringent some of the requirements that it is well to consider the law carefully.

The first paragraph is as follows: The every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any state or territory of the United States or under the laws of any foreign country, or now or hereafter organized under the laws of any foreign country and in any state or territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to 1 per centum upon the entire net income over and above \$5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends, upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed, or if organized under the laws of any foreign country, upon the amount of net income over and above \$5,000 received by it from business transacted and capital invested within the United States and its territories, Alaska and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; provided, however, that nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment

of life, sick, accident and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

ACT IS SPECIFIC

The determination of the exact amount of the net income to which the law would apply would be most difficult if the act were not specific on the point. The first paragraph detailed the amount of the tax and what corporations would be liable to it. The next tells how the net income must be determined. It says: Income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources (first) all the ordinary and necessary expenses actually paid within the year out of the net income for the maintenance and operation of its business and properties including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount not exceeding the paid-up capital stock of such corporation, or insurance company, or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposit; (fourth) all sums paid by it within the year for taxes imposed by the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed; Provided That in the case of a corporation, joint stock company, or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, and the District of Columbia, (first)

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The law then provides that after the net income has been ascertained in the manner detailed above, \$5,000 shall be deducted from it and a tax of one per cent computed on the remainder. The tax is payable on the business done for the year ending Dec. 31, 1909, and for each calendar year thereafter.

A very important duty is then imposed, stripped of its legal verbiage the next section says in substance that on or before the first day of March, 1910, and the first day of March in each year thereafter, a true and accurate report under oath of the president, vice president, or other principal officer of the corporation and its treasurer or assisting treasurer, shall be made by the corporation. This report must be made to the collector of internal revenue for the district in which the corporation has its principal place of business. Blanks will be furnished by the collector upon application.

The report must contain in substance the following:

1. The total amount of the paid-up capital stock of the corporation outstanding at the close of the year.
2. The total amount of the bonded and other indebtedness of such corporation at the close of the year.
3. The gross amount of the income of the corporation received during the year from all sources, also:
- 3a. The amount received by the corporation within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax imposed by this section.
4. Total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of the corporation within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of the property.
5. The total amount of all losses actually sustained during the year and not compensated for by insurance or otherwise, stating separately the amounts allowed for depreciation of property.
6. The amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such indebtedness not exceeding the paid up capital stock of the corporation outstanding at the close of the year.
7. The amount paid by the corporation within the year for taxes imposed under the authority of the United States or any state or territory thereof, and, separately, the amount paid by the corporation for taxes imposed by the government of any foreign country as a condition to carrying on business therein.
8. The net income of the corporation, after deducting the amounts permitted to be deducted by the statute. These are detailed above.

WORK FOR COMMISSIONER.

The act goes on to say: If the commissioner of internal revenue shall, upon evidence, deem the report as filed incorrect, or if a corporation has failed to make a report, the commissioner may require the corporation to furnish further information with reference to its capital, income, losses and expenditures, as he may deem expedient, and for that purpose, or for the purpose of making a report where none has been made, he may appoint a revenue agent to examine books and papers of the corporation, and to require the attendance of any officer or employee of the corporation, and to take his testimony in reference to the matters required to be included in the report, and upon the information so obtained, the commissioner may amend the report, or make a report where none has been made.

In case a report is made with false or fraudulent intent, the commissioner is empowered to add 100 per centum to the tax imposed and in case of a refusal or neglect to make a report, he is to add 50 per centum of such tax.

If the failure to make a report is caused by the absence or absence of an officer of the corporation, or was caused by any sufficient reason, the collector is authorized to extend the time to make such report, in no case not more than 30 days.

The tax is to be assessed and the corporation notified of the amount for which it is liable on or before the first day of June each year.

Payment is to be made on or before the 30th day of June of each year. In case, however, a false or fraudulent report, or none, is made upon discovery thereof by the commissioner at any time within three years after the report is due, he may make a report upon information obtained by him, and assess the corporation accordingly.

PENALTIES IMPOSED.

If the tax is not paid by the 30th of June in any year, and remains unpaid for 10 days after notice and demand thereof by the collector, five per cent is to be added to the amount of the tax unpaid and interest at the rate of 1 per centum per month upon the tax from the time it becomes due. The language of the act as to this penalty

is, however, rather ambiguous and commentators claim that the penalty would be added if the tax was not paid on or before the 30th day of June.

In case of a refusal on the part of the corporation to make a report at the times specified, or in case it renders a false or fraudulent report, the corporation is liable to a penalty of not less than \$1,000 and not exceeding \$10,000.

Any officer of a corporation who makes a false or fraudulent report or statement with the intent to defeat or evade the assessment, shall be guilty of a misdemeanor, and subject to a fine not exceeding \$1,000 or imprisonment not exceeding one year, or both, at the discretion of the court, with the costs of the prosecution.

There is also a provision for punishing collectors, clerks, agents, etc., who unlawfully divulge information officially obtained.

The circuit and district courts of the United States for the district within which any person, summoned by authority of the act to appear to testify or to produce books, shall reside, are given jurisdiction to compel the attendance of the witness, the production of the books or other necessary documents. Such, in brief, is the new corporation

tax law, the significance of which is as yet scarcely appreciated, though even now its mandates are upon us.

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